SINGLE BENCH

03

IN THE HIGH COURT OF JUDICATURE AT BILASPUR

WRIT PETITION NO. 1723 OF 2005

PETITIONER Appellant

Smt. Binda Bai, daughter of Jeevrakhan Gada & Wife of Teekamlal, resident of Village Gadaghat, Tehsil Gariyabandh, District Raipur.

VS

RESPONDENTS R

1. State of Chhattisgarh, through the Secretary, Ministry of Revenue, D.K.S. Bhawan, Raipur.
2. The Additional Tehsildar, Tehsil Gariyabandh, District Raipur.
3. Gram Panchayat, Gadaghat, Through the Sarpanch, Village Gadaghat Tehsil Gariyabandh, District Raipur.
4. Guhanlal, son of Gaibeeram, resident of Village Gadaghat, Tehsil Gariyabandh, District Raipur.

P.R. No. 1698/05 Presented by Shri B.P. Sharma dated 19-Dec-05

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शपथ आयुक्त बिलासपुर तहसील कोर्ट

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA.

1. **PARTICULARS OF THE PETITIONER:**

   As mentioned above in the cause title.

2. **PARTICULARS OF THE RESPONDENT:**

   As mentioned above in the cause title.

HIGH COURT OF CHHATTISGARH AT BILASPUR

W.P.No.1723 of 2005

Smt. Binda Bai

Vs.

State of Chhattisgarh and others

W.P.No.3241 of 2004

Guhanlal

Vs.

Board of Revenue and others

O R D E R

Post for 21.06.2005

Sd/-
Sunil Kumar Sinha
Judge

HIGH COURT OF CHHATTISGARH AT BILASPUR

W.P.No.1723 of 2005

Smt. Binda Bai
Vs.
State of Chhattisgarh and others

Shri B.P. Sharma, counsel for the petitioner.

Shri Pankaj Shrivastava, Panel Lawyer for the State/ Respondents No.1 and 2.

Shri Raja Sharma, counsel for private respondent no.4.

W.P.No.3241 of 2004

Guhanlal
Vs.
Board of Revenue and others

Shri Raja Sharma, counsel for the petitioner

Shri Pankaj Shrivastava, Panel Lawyer for the State/ respondents No.1 and 2.

Shri B.P.Sharma, counsel for private respondent no.3

ORDER
(21.6.2005)

Sunil Kumar Sinha, J

Since both these writ petitions arise out of a common order dated 11.8.2004 passed by the Board of Revenue, Bilaspur, Link Court-Raipur, the same are being disposed of by this common order.

(2) The facts of the case are that one Jeev Rakhan was village Kotwar of village Gadaghat. After his retirement the post became vacant. With an intention to fill up the post, Additional Tahsildar, Gariaband registered a Revenue Case vide No.70/A-

56/2002-2003 and issued proclamation on 24.3.2003 calling the names of interested candidates for the said post till 09-4-2003. On this proclamation, applications of Binda Bai, who is the daughter of Ex-Kotwar (Petitioner in W.P.No.1723/2005 and respondent No. 3 in W.P.No.3241/2004), and Guhanlal (petitioner in W.P.No.3241/04 and respondent in W.P.No.1723/2005) were received. The Tehsildar considered their applications and called certain reports from Police Station etc., and thereafter passed an order dated 26.3.2003 whereby the directions were issued to appoint Guhanlal as the Kotwar of the said village. Against the aforesaid order of appointment, Smt.Binda Bai filed an appeal before the Sub-Divisional Officer, Gariaband which was registered as appeal Case No.54/A-56/2002-2003. The Sub- Divisional Officer heard the appeal and by order dated 12.12.2003 dismissed the same and confirmed the order passed by the Tehsildar. Being aggrieved by the order passed by the Sub-Divisional Officer, Binda Bai preferred a Second Appeal before the Board of Revenue and the Board of Revenue after hearing both the parties passed the impugned order dated 11.8.2004 by which it set aside the orders passed by the Courts below and directed to conduct a fresh enquiry for the appointment to the said post under the provisions of Section 230 of the M.P(C.G) Land Revenue Code 1959 (hereinafter referred to as the Code) and for this purpose the matter was directed to be remanded to the Court of concerned Tehsildar. It is against this order passed by the Board of Revenue these writ petitions have been filed.

(3) Shri B.P. Sharma, learned counsel for the petitioner Smt. Binda Bai submits that Binda Bai is the daughter of Ex-Kotwar. Though she is married to a person of some other village but she is still residing in village Gadaghat and is fully competent to perform the duties of Kotwar, therefore, she was having a preferential right over the post and she should have been appointed as the Kotwar of the village. He contended that the Board of Revenue fell into gross error by not passing an order and direction for appointment of this petitioner to the said post. He also submits that the remand order passed by the Board of Revenue is without jurisdiction as the said Court while exercising jurisdiction under section 44 of the Code was having no authority to pass such an order because it has been laid down vide proviso to sub-section 3 of Section 49 of the Code that the appellate Court shall not remand the case for disposal by any revenue officers subordinate to it while exercising the appellate jurisdiction u/s 44 of the Code.

(4) On the other hand Shri Raja Sharma, learned counsel for the petitioner Guhanlal in W.P.No.3241/2004 argues that the orders passed by the Tehsildar as well as the Sub-Divisional Officer were fully justified and the Board of Revenue erred in law in setting aside those orders and remitting the matter back to Tehsildar for fresh disposal in accordance with law.

(5) The submission of Shri Pankaj Shrivastava, learned counsel for the State is that though the word 'remand' in its Hindi version ***Pratyavartit*** has been used by the Board of Revenue but in fact the Board has not remanded this matter like an usual

revenue case because after setting aside the appointment of a selected candidate by the appellate authority, which is Board here, the appointing authority was duty bound to make new appointments or to enquire into the matter afresh as per the directions issued by the Board, therefore, though the matter seems to be remanded by the express order as it appears on record, but the same is not a case of remand and it is a case of fresh consideration as an effect of setting aside of the order by the Board. He prays for dismissal of the petitions.

(6) I have heard learned counsel for the parties and have also perused the records of the case.

(7) First of all, a brief consideration is required regarding respective claims of the petitioners. Smt. Binda Bai claims herself to be daughter of Ex-Kotwar but it is an admitted position that she has been married to a person of different village which is at a reasonable distance from village Gadaghat. She has claimed preferential right over the post but she has not been able to substantiate the said right on the basis of any rule which may support her contention being the daughter of Ex-Kotwar. The Board has considered this fact that only on the basis of being the successor of Ex-Kotwar and also on the basis of the lesser age than the age of rival claimant, any person cannot be held to be entitled for appointment to the post of Kotwar. In fact, the Board has found that the rules framed for appointment of Kotwar have not been complied with. Therefore, even after allowing the appeal by setting aside the order of appointment of Guhanlal, this petitioner Smt.Binda Bai has not been appointed. Now if we consider the

case of petitioner Guhanlal it shall be clear that he has not directly applied on the basis of Istaha/proclamation issued by the Tehsildar. It appears that he had made some application to the Chief Minister and that application was forwarded to the concerned authority for its proper disposal. On this application only his candidature was considered along-with the candidature of Petitioner Bindabai. After perusal of the order of the Board it reveals that the said application was not made within the time limit fixed by the competent authority and was made beyond the time period as per the proclamation or *Istaha*. The Board has also observed that only on the basis of recommendation of Gram Panchayat by a proposal dated 07.4.2003 this petitioner has been appointed as the Kotwar of the village. The Board has found that proper enquiry has not been done in the matter of appointment of this petitioner as well.

(8) After considering the records it appears that the rules framed for appointment of Kotwar have not been strictly complied with by the Tehsildar. From bare perusal of section 230 of the Code along-with rules it transpires that for each village or group of villages there shall be appointed, in accordance with rules made under section 258, one or more Kotwars for the purpose of such duties as may be prescribed. Since the appointment is to be made under the rules so specified, the rules are to be followed strictly. If a competent court comes to a conclusion that the rules are not followed and the requirement of law has not been fulfilled then it cannot be said that the orders passed by the said court is unjustified. The jurisdiction of the High Court in the matter of

interference in the appointment of Kotwar etc., is limited. This court is obliged to consider whether the rules have been properly followed and the selection has been made in a just and fair manner. It is not the jurisdiction of this court to substitute its own judgment about the merits of the candidate or give appointment to the candidate. **Please see *1986 M.P.L.J Pg.717 (Ayodhya Prasad Vs Board of Revenue)***. Since in the opinion of this Court the Board has rightly pointed out various infirmities in the appointment of Guhanlal and has set aside the same, this Court is not inclined to interfere in the order passed by the Board which set asides the appoint of this petitioner.

(9) Now coming to the next question raised by learned counsel for the petitioner Binda Bai that the order of remand is without jurisdiction. In this regard, I would like to refer to various provisions of the Chapter V of M.P.(C.G.)Land Revenue Code 1959. This chapter deals with the provisions of appeal, revision and review. Section 44 deals with the appeal and appellate authorities. Section 45 deals with transfer of certain pending proceedings to the Settlement Commissioner. Section 46 deals with the provision, which shows that there shall be no appeal under this code against certain orders which are mentioned in this section. Section 47 deals with the limitation and Section 48 deals with the provisions regarding copy of the order objected to accompany the petition and section 49 deals with the powers of the appellate authority. Sub-sections (1) & (2) of Section 49 deals with the formalities to be completed before hearing of the appeal and sub-section (3) in fact lays down the jurisdiction of the appellate authority. It has been

stated that after hearing of the parties the appellate authority may confirm, vary or reverse the order appealed against or may take such additional evidence as it may consider necessary for passing its order. The proviso to this sub-section to which Mr.B.P.Sharma relied, states that the appellate authority shall not remand the case for disposal by any revenue officer subordinate to it. It is in this context, the argument has been advanced that the order of remand passed by the Board of Revenue is not in accordance with law as the same is without jurisdiction because proviso to sub-section 3 of section 49 prohibits any such order of remand by the appellate authority.

(10) After bare perusal of the order, though it appears in the first instance that the same is the order of the remand, but in fact it is not an effective order of remand passed by the appellate authority. In the opinion of this Court, consideration for the appointment in a fresh manner is a natural consequence of setting aside the order of the subordinate court which does not require any order of remand by the appellate authority. Even if the Board would not have said that the matter is remanded to the Tehsildar for making fresh orders after following the rules, the matter was bound to be placed before the Tehsildar because the same relates to appointment to the statutory post which is a consequence of natural phenomenon at the instance of the post being vacant under Section 230 of the C.G. Land Revenue Code, 1959. Therefore, it cannot be said that in fact the Board has passed an effective order of remand which would be essentially covered under the proviso to sub-section 3 of section 49 of the Code. Even if we

examine the matter from a different angle in the light of proviso to sub-section 3, the result would be the same. Sub-section 3 postulates that the appellate authority may confirm, vary or reverse the order appealed against. It has also been provided that he may take such additional evidence as it may consider necessary for passing the order. All these provisions go to show that the order has to be finalized by the appellate authority either by confirming the same or varying the same or by reversing the same but if the appointment to any statutory post by the subordinate authority is not confirmed and is varied or reversed for want of some statutory defect or for violation of any rules then the statutory authority is duty bound to fill up the post by reconsidering the matter of appointment and for this purpose if an order is passed by the appellate authority, then it cannot be said that the same is an order of remand. The result comes that the fresh consideration by the appointing authority is the natural consequences of quashment of the order by the appellate authority and a direction by the Board to complete the process of selection or appointment cannot be said to be an order covered under proviso to sub-section (3) of section 49 of the Code as the same is a redundant direction not required under the law. The entire order does not call for any interference on the basis of jurisdictional error committed by the Board. This Court can ignore the redundant portion of judgment by supporting the right conclusion arrived at by the subordinate Courts or Tribunal. However, for the sake of correction of procedural error this direction of remand contained in the order of Board is set aside.

(11) It is directed that the concerned revenue officer shall issue a fresh proclamation and shall call upon the applications from interested candidates for appointment to the post of Kotwar of village Gadaghat. The petitioners of both the petitions are not required to submit fresh applications. However, if after fresh proclamation some other applications are received, they shall be taken into consideration along-with the applications of the petitioners of both the writ petitions and after following the procedure laid down in the rules, a best person shall be selected and appointed as the Kotwar of the village in accordance with law. It is also directed that this exercise shall be completed within a period of three months from the date of receipt/production of certified copy of this order before the concerned authority. If the proclamation has already been issued as per the order of Board of Revenue and the process is on, then there is no necessity of issuing a fresh proclamation and further proceedings after issuance of the earlier proclamation shall be followed as the parties are not in a position to inform the recent stage of the matter. At this stage, it is stated that petitioner namely Guhanlal is still continuing on the said post. It is directed that till the process of fresh appointment is completed, the status quo as existing today shall be maintained by the parties.

(12) Both the writ petitions stand disposed of.

(13) There shall be no order as to costs.

Sd/-
Sunil Kumar Sinha
Judge